

**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

**WRIT PETITION No.11220 OF 2010**

**ORDER:**

Heard Sri Metta Chandrasekhar Rao, learned counsel for the petitioner, and Sri P.Rama Bhoopal Reddy, learned Standing Counsel for the respondents, apart from perusing the entire material available on record.

2. Order passed by the office of the Regional Provident Fund Commissioner, under Section 7-A of the Employees' Provident Fund and Miscellaneous Petitions Act, 1952 (for brevity, 'the Act'), *vide* proceedings No.AP/46653/SRO/RJY/7A/Comp/2009/2253, dated 20.01.2009, as confirmed by the Employees' Provident Fund Appellate Tribunal, New Delhi-second respondent herein *vide* order, dated 08.04.2010, in A.T.A.No.208 (1) of 2009, is the subject matter of the present Writ Petition filed under Article 226 of the Constitution of India. The Provident Fund authorities pressed into service the provisions of the Act and passed an order, dated 20.01.2009, under Section 7-A of the Act, determining the liability of the petitioner-Organisation as Rs.21,14,914/- for the period commencing from February, 1999 to May, 2005. Aggrieved by the said order of demand, passed by the primary authority, petitioner herein preferred a statutory appeal under Section 7-I of the Act. The Appellate Tribunal-Second respondent herein dismissed the appeal i.e., A.T.A.No.208 (1) of 2009, filed by the petitioner herein, *vide* order, dated 08.04.2010, confirming the

order passed by the primary authority under Section 7-A of the Act. Assailing the validity and the legal sustainability of the said orders, passed by the primary and the appellate authorities, petitioner herein filed the present Writ Petition and the composite High Court of A.P., while ordering *Rule Nisi*, on 12.05.2010, passed an interim order in W.P.M.P.No.14284 of 2010, staying the recovery proceedings against the petitioner including attachment of its bank account, subject to the condition of the petitioner depositing further 10% of the total amount due apart from 50% already deposited. In the aforesaid manner, this Court stayed the further proceedings subject to the petitioner depositing total amount equivalent to 60% of the demanded amount. It is not in dispute that the petitioner herein complied with the said condition.

3. According to the learned counsel for the petitioner, the impugned orders are highly illegal, arbitrary, unreasonable, violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of the provisions of the Act. It is the further submission of the learned counsel that, since the petitioner herein is not the principal employer, the primary as well as the appellate authorities totally went wrong in fastening the liability to the petitioner herein.

4. On the other hand, learned Standing Counsel submits that the contract employees engaged by the petitioner herein fall under the definition of 'employee' as defined under Section 2 (f) of the Act, as such, the orders passed by the primary and

appellate authorities, by any stretch of imagination, cannot be faulted.

5. A perusal of the order passed by the primary authority, determining the liability, in clear and vivid terms, discloses that the primary authority, after duly taking into consideration the provisions of Section 29 of the Contract Labour (Regulation and Abolition) Act, 1970 and also Rule 83 of the Rules framed thereunder so also Section 2 (f) of the Act, came to a categorical conclusion and determined the liability accordingly.

6. Coming to the order passed by the appellate Tribunal, the appellate Tribunal also, after considering the effect of Section 2 (f) of the Act, recorded a categorical finding against the petitioner herein.

Section 2(f) of the Act reads as follows:

*(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of [an establishment], and who gets his wages directly or indirectly from the employer, [and includes any person—*

*(i) employed by or through a contractor in or in connection with the work of the establishment;*

*(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;*

7. A reading of the above provision of law, in clear and unequivocal terms, demonstrates that the term 'employee' includes the individuals, employees by or through a contractor. When such is the clear language of the statutory provision of law, in the considered opinion of this Court, petitioner herein cannot escape the liability.

8. It is a settled and well established principle of law that, unless the order impugned suffers from inherent lack of jurisdiction, patent perversity and passed in violation of the principles of natural justice, a writ, in the nature of writ of certiorari, cannot be issued under Article 226 of the Constitution of India. In the instant case, this Court is of the opinion that no such contingencies are present, as such, this Court is not inclined to meddle with the well-reasoned orders passed by the primary and appellate authorities which are impugned in the Writ Petition.

9. For the aforesaid reasons, Writ Petition is dismissed. However, taking into consideration the submissions of the learned counsel for the petitioner and having regard to the nature of controversy, six months' time is granted to the petitioner to pay the balance of the amount covered by the impugned orders. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

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**A.V.SESHA SAI, J**

08<sup>th</sup> February, 2022  
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